

REMARK

Claims 1-9, 11, 43, and 44 were rejected by the Examiner under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 and 5 of U.S. Patent No. 6,468,300 in view of Winston et al. (U.S. Pat. No. 6,117,166). Claims 1-3, 6-9, 11, 29, 35, 38, and 41 were rejected by the Examiner under 35 USC §103(a) as being unpatentable over Winston et al. (U.S. Pat. No. 6,117,166) alone. Claims 29, 30, and 36-44 are rejected by the Examiner under 35 USC 103(a) as being unpatentable over Love (WO 97/24081) in view of Winston et al. (U.S. 6,117,166). Claim 4 is rejected under 35 USC §103(a) as being unpatentable over Winston et al. (U.S. Pat. No. 6,117,166) in view of Love (WO 97/24081). Claim 5 is rejected by the Examiner under 35 USC §103(a) as being unpatentable over Winston et al. (U.S. Pat. No. 6,117,166) in view of Narciso (WO 94/15583).

However, in view of the above amendments to claims 1 and 11 the Winston et al. reference is not a valid prior art reference against these claims. Specifically, support is found for the currently amended claims 1 and 11 in column 2, lines 38-41, column 2, line 49, to column 3, line 2 and Fig. 1 of U.S. Patent 6,468,300 (copy enclosed), which was the parent of the present application. The filing date of the parent application is September 23, 1997 which precedes the filling date of the Winston et al. patent of October 27, 1997 by over a month. That being the case the Examiner's reliance on the Winston et al. reference in the above rejections is not supported by this reference. Applicant respectfully request that the rejections based upon this reference be withdrawn.

Additionally, the applicant wishes to note that even if the Winston et al. reference was valid prior art, which it is not, the reference would still fail to teach applicant's invention of claims 1 and 11. The claims require a jacket which encircles the stent and the reference does not teach this feature. As shown in Fig. 1 the graft 104 does not fit entirely around the circumference of the stent 102, i.e. does not encircle the stent., it is a patch which is pressed against the vessel wall. Fig. 2 is described in column 2, line 36-38 as being an illustration of the apparatus shown in Fig. 1 so it to would not have a graft which encircles the stent. The device shown in Fig. 3 has the graft 304 on the inside of the stent not as a jacket on the exterior of the stent.

Claim 11 was rejected by the Examiner under 35 USC §102(b) as being anticipated by Narciso (WO 94/15583). However, applicant believes that the Examiner has misconstrued this reference. Specifically, the Examiner cites page 8, line 9 to page 9, line 7 of the Narciso published application for teaching the use of an inner layer less than 0.45 mm in thickness. However this passage does not refer to the use of a layer. The passage relied upon by the Examiner refers to the use of biogenic tissue such as endothelium from the inner most layer of an artery (intima), collagen, fibrin, etc which is surgically removed from a donor animal. There is no reference expressed or implied that the intimal layer is removed intact, only the tissue thereof is removed. The publication goes on to indicate that this tissue, not the layer itself, is treated to form a bioabsorbable tent or the stent coating on a metallic stent. There is no reference to a separate stent jacket. The Examiner makes reference to MPEP 2112, indicating that it is applicant's burden to show that there is no inherency. However, as noted above, there is no teaching of the tissue layer being used, only that the tissue from a layer is

used. Thus, the Examiner has not met the burden of providing a rational or evidence tending to show inherency as required by MPEP 2112.

The applicant respectfully submits that the pending claims define patentable subject matter over the references which are prior art against these claims. Further examination and an early allowance of the claims are earnestly solicited.

By:


Edward J. Lynch
Registration No. 24,422
Attorney for Applicant

Coudert Brothers LLP
600 Beach Street, 3RD Floor
San Francisco, CA 94109
Direct Dial: (415) 351-5708
Telephone: (415) 409-2900
Facsimile: (415) 409-7400